

UNITED STATES DISTRICT COURT
 for the
 District of New Mexico

United States of America

v.

Sean Patrick Fosler

)

Case No. 21-1782 MJ

*Defendant(s)***CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of September 27-December 4, 2019 in the county of Dona Ana in the
 State and District of New Mexico, the defendant(s) violated:

*Code Section**Offense Description*

18 U.S.C. § 2251(a)
 18 U.S.C. § 2252A(a)(2)

Production of child pornography
 Distribution of child pornography

I further state that I am a Homeland Security Investigations Special Agent
 and that this complaint is based on the following facts:

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet.

STEPHANI M LEGARRETA

Digitally signed by STEPHANI M LEGARRETA
 Date: 2021.12.05 15:48:19 -07'00'

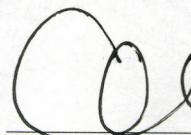
Complainant's signature

Stephani Legarreta-HSI Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: December 6, 2021



Judge's signature

City and state: Las Cruces, New Mexico

Honorable Carmen E. Garza, U.S. Magistrate Judge

Printed name and title

Affidavit

1. I, Special Agent Stephani Legarreta, your Affiant, have been a Special Agent with Homeland Security Investigations (HSI) and have been so employed since January of 2008. I am classified, trained and employed as a federal law enforcement officer with statutory arrest authority charged with conducting criminal investigations of alleged violations of federal criminal statutes, including Title 18 of the United States Code. I am currently assigned as a criminal investigator for the Assistant Agent in Charge (ASAC), Las Cruces, New Mexico. Prior to my current position, I was a student for six (6) years at New Mexico State University, where I received my Bachelors and Master's Degree in Criminal Justice. During the course of investigation, I have consulted with other HSI Agents and other law enforcement detectives and officers who have extensive experience investigating child exploitation. Your Affiant has conducted numerous state and federal investigations and received training, education, and experience with the identification and investigation of child exploitation violations. I have been personally involved with the execution of arrest warrants and search warrants to search residences, businesses and seize materials relating to child exploitation.
2. The information set forth in this affidavit was derived from my own investigation and/or communicated to me by other sworn law enforcement officers. Because this affidavit is submitted for the limited purpose of securing a criminal complaint, your affiant has not included each and every fact known to me concerning this investigation. Your affiant has set forth only those facts that your affiant believes are necessary to establish that probable cause to support a criminal complaint against Sean Patrick Fosler for production of child pornography, in violation of 18 U.S.C. § 2251(a), and distribution of child pornography, in violation of 18 U.S.C. §§ 2252A(a)(2).

Relevant Statutes

3. Production of child pornography, in violation of 18 U.S.C. § 2251(a), provides "any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the

United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e).”

4. Distribution of child pornography, in violation of 18 U.S.C. § 2252A(a)(2), provides “any person who knowing receives or distributes any child pornography that has been mailed, or using any means or facility of interstate commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer . . . shall be punished as provided in subsection (b).”

Details of the Investigation

5. On December 2, 2021, Homeland Security Investigations (HSI) El Paso was notified by a cooperating source (CS)¹ that Sean Patrick Fosler (hereinafter “Fosler”), who currently resides in Las Cruces, New Mexico, was producing live videos of himself and his minor stepdaughter (hereafter identified as V1) engaging in sexually explicit conduct. V1 is currently nine-years-old. The CS stated that he would chat with Fosler on the social media application, identified as “SnapChat.” According to the CS, Fosler advised he would babysit V1 while her mother was away. The CS explained to law enforcement that during a snapchat live communication—which I know from my training and experience is essentially a live video stream—with Fosler, he witnessed Fosler in a room and heard Fosler call V1 by name. V1 then walked into the room and Fosler asked V1 if she could “help him with this,” with his erect penis exposed. V1 then began to manually stroke Fosler’s erect penis with her hand. According to the CS, shortly after the live video stream, Fosler sent an image of V1 kneeling on the floor, and she was not wearing any underwear. The CS also stated that on another occasion, Fosler sent him an image which depicted V1 holding Folser’s erect penis with her hands, and V1’s mouth was open. The CS further stated he believed the photo he had received from Fosler depicting V1 on her knees was taken in the same room that he had witnessed the snapchat live communication

¹ CS is being investigated in a separate child exploitation case and is facing potential charges in that case.

because the background was the same. When questioned about when this occurred, the CS first stated the incidents described above could have happened in 2019, and then the CS estimated the conduct perhaps occurred between May 2020 and June 2020.

6. After receiving the information described above, your affiant learned that in September 2020, El Paso Police Department (EPPD) executed a search warrant on the CS' Snapchat account in an unrelated child exploitation case. On December 3, 2021, the Snapchat search warrant return was provided to HSI for review. During the search of the Snapchat return, two Snapchat accounts were identified as being associated with Fosler. The Snapchat accounts were identified as "sfosler2" and "scott19572." Your affiant believes the accounts described above are associated with Fosler because of the names of the accounts as well as the fact that in both accounts, explicit pictures (without any minors) of Fosler were found. In those pictures you can either see Fosler's face or his significant other (the mother of V1) identified Fosler. Law enforcement identified the following images within the return:

- a. **File Name:** chat~media_v4~2019-12-06-13-31-34UTC~cpboy222~scott19572~saved~1c9ab6ca-f17c-45a4-aec9-58682fa7f00d-v4.jpg

Date on File System: 12/06/2019 13:31:34 UTC

Description: still image depicting a male erect penis with a small hand which appears to be a child gripping the penis. A white sleeve appears to be on the arm of the hand gripping the penis. In the background, there is a specific rug on the floor of the room which appears to be multi color patterns with a dark accent color. There is also an entertainment center seen in the background with Christmas lights along the entertainment center.

- b. **File Name:** chat~media_v4~2019-12-06-13-27-48UTC~cpboy222~scott19572~saved~fb428222-34d0-4239-a04b-1c92698a28b6-v4.jpg

Date on File System: 12/06/2019 13:27:48 UTC

Description: still image depicting what appears to be a white pre-pubescent female child on her hands and knees posing in a sexual manner and her buttocks is visible. The child is wearing a white shirt with no clothing from the waist down. The child has brown hair, and her hair is pulled back in a bun. Her body is facing away from the camera and her jeans are lying next to her. In the background, there is a specific rug on the floor of the room which appears to be multi color patterns with a dark accent color.

- c. **File Name:** chat~media_v4~2019-09-27-18-17-08UTC~usernameiserika~sfosler2~saved~8aa39d19-9ce8-4dd9-a19a-d6e58091
Date on File System: 09/27/2019 18:17:08 UTC
Description: Still image depicting what appears to be a white pre-pubescent child's vagina with the camera focused in on the vagina. An index and middle finger which appear to be an adult male's fingers are seen to the side of the vagina resting near the vagina and slightly pulling open the vagina. In the background, a teal color sheet is seen and an off-white color wall.
- d. **File Name:** custom_sticker~~2019-12-04-08-28-19UTC~cpboy222~~e89060c9-9ae8-48f3-b7a4-603e0b076177~v4
Date on File System: 12/04/2019 08:28:19 UTC
Description: Still image depicting what appears to be a white pre-pubescent female on her hands and knees posing in a sexual manner. The female child's upper body isn't shown but from the waist down is nude and exposed. Her body is facing away from the camera and only her feet, legs and buttocks are exposed. In the lower right-hand corner is what appears to be an erect adult white male penis. In the background, there is specific bedding which appears to be a pattern of roses and Disney characters. To the side of the minor is a pair of female child underwear laying on a pink and blue comforter. At the bottom of the image is a space that states "send a chat" and a camera symbol to the left of it.
- e. **File Name:** custom_sticker~~2019-12-04-09-12-4UTC~cpboy222~~bd02b9cd-db56-459d-9773-40720297a692~v4
Date on File System: 12/04/2019 09:12:54 UTC
Description: Still image depicting what appears to be the same white pre-pubescent female on her hands and knees posing in a sexual manner. The female child is wearing a white shirt with no clothing from the waist down. Her body is facing away from the camera and only her back side can be seen. In the background, there is specific bedding which appears to be a pattern of roses and Disney characters. To the side of the minor is a pair of female child underwear laying on a pink and blue comforter. At the bottom of the image is a space that states "send a chat" and a camera symbol to the left of it.

7. On December 3, 2021, an interview was conducted with the biological mother of V1 and images a and b were shown to the mother. The mother identified V1 in image b where her face could not be seen, however the mother recognized the living room, the hair bun on V1, the pants on the floor next to V1, and V1's naked back side of her body. The mother recognized the bun and stated that she is the only one who styles V1's hair with that particular bun. In image a, the mother identified the living room, furniture, and rug in the living room. A snip of the bedsheets depicted in images d and e were shown to the mother and she identified those sheets as belonging to V1. Image c was not shown to the

mother but a photo of the teal sheets she had in her room in the past was shown to law enforcement and the color of the sheets match the sheets seen in the image. The mother also said her walls in her residence are an off-white color. Accordingly, based on my investigation and review of evidence in the case so far, I believe that V1 is the minor depicted in all the pictures described above. V1 was six-years-old on September 27, 2019, and seven-years-old on December 4, 2019. The dates were gained as the file information for each image.

8. On December 3, 2021, the New Mexico State Police obtained a state district court search warrant for the residence of Fosler. While conducting the search of the residence it was observed the rug in the living room along with other furniture matched the room in the images found by law enforcement on the CS' Snapchat search warrant return described above.
9. On December 3, 2021, a forensic interview was conducted of V1. V1 denied any sexual abuse by Fosler. In my training and experience, this is not uncommon for victims of sexual abuse, especially when the abuse has been longstanding. There were drawings found in V1's bedroom during the execution of the search warrant. Most of the drawings depicted a female and a male with the male's penis being inserted into the female. V1's name is written on some of the drawings along with other names such as V1's sibling. V1 was shown the drawings in the interview but stated she did not know who drew those drawings. It was very obvious when the drawings were shown to V1, her demeanor drastically changed in a negative way. The drawings were shown to V1's mother and the mother stated the books the drawings were in were from V1's second grade year which would have been in 2020.
10. A post-**Miranda** interview was conducted of Fosler and he admitted to using the Snapchat Application. Fosler specifically stated he opened a Snapchat account approximately two weeks prior but never had one before. Later in the interview, Fosler admitted he had another Snapchat account but it was from years ago. Fosler then elected his right to remain silent and terminated the interview.

